IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.7939 of 2003

Sayed Abdul Hamid Abdul Jainuddin
and anr ...Petitioners
vs
Smt Hasinabi Ayubkhan Pathan & ors..Respondents

Mr.Uday Warunjikar for petitioners
Mr P N Joshi for respondent no l
Mr.R.V More for respondent no. 2

CORAM: A.P.SHAH J.

Dated 25.l0.2005

P.C:

. I have heard the larned counsel for the parties. Perused the orders of the courts below. Both the courts below have recorded a finding of fact that the suit premises are in a dilapidated and dangerous condition. The lower appellate court has observed in its judgment as under:

> "... Commissioner's report further indicates that support by wooden poles to the bent beam in the roof. The photographs do indicate the condition of this wooden beam. It appears from the photographs produced by the plaintiffs that to the beam of about 9/l0 feet support are given at four places. Two by the poles in the walls and

two in the middle. This itself indicates that the beams has lost it’s strength..... Besides it the sub floor on the tenanted premises appears to be damaged from the photographs on record. Both the parties have produced photographs with their negatives on record and have not disputed the correctness of them. The evidence in the form of photographs therefore can be taken into consideration.... The notices issued by the Corporation shows that same was issued after the due inspection of the house and in the circumstances discussed above, it does not appear that the officers of the Corporation have acted in collusion with the defendant no.l..."

. By order dated 4.l2.2003 Bhosale J. directed the Municipal Corporation to appoint a responsible officer having engineering background to visit and inspect the suit premises and to submit his report on the condition of the suit premises. The learned counsel for the parties agreed that the report submitted by the concerned officer would be acceptable to the parties. Pursuant to the said order premises were again inspected by the Executive Engineer, Town Planning Department of

Nasik Municipal Corporation and he has reported that the structure is not at all stable and should be immediately dismantled in the interest of persons residing inside and nearby the structure. The photographs of the structure are also annexed to the report.

. In the light of the report submitted by the Executive Engineer it would be wholly inappropriate to interfere with the concurrent findings of fact recorded by the courts below.Petition is dismissed.